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John L. Rogitz, Esq. ROGITZ & ASSOCIATES Suite 3120 750 "B" Street San Diego, CA 92101			EXAMINER KRECK, JOHN J	
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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/676,593  
Filing Date: October 01, 2003  
Appellant(s): BROOKSHIRE ET AL.

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Brookshire, et al.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 20 October 2005 appealing from the Office action mailed 18 October 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief filed 23 February 2005.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief filed 23 February 2005 is substantially correct; however claim 10 has not been rejected twice. Claim 10 has been rejected only once, when prosecution was reopened on 18 October 2005.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief filed 23 February 2005 is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief filed 23 February 2005 is correct.

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It is noted that claim 15 includes language "battery means for powering" and "solar power means for recharging". These limitations have not been construed as means-plus-function under 35 USC 112 6<sup>th</sup> paragraph, since the terms "battery" and "solar power" preceding "means for" impart structure to the phrase. Appellant did not provide any identification of the corresponding structure for these limitations as required by 37 CFR 41.37(c)(1)(v):

"every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters."

If it is deemed that these limitations are to be construed under the provisions of 35 USC 112 6<sup>th</sup> paragraph; then they are identified below:

"battery means for powering": Page 4, lines 16 and 17; reference number 38. A lead acid battery is disclosed.

"solar power means for recharging": Page 4, lines 21 and 22; reference number 46. An array of solar cells is disclosed.

#### **(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-3, and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Adkins, II (United States Patent number 5,131,888).

Adkins shows the fan module; at least one fan (12) in the module; at least one battery (18); and solar panel (15). Adkins also shows the fan pipe ("housing") and flanges. Adkins fails to explicitly disclose the fan disposed between the flanges as called for in claim 1. It is noted that Adkins discloses that reference number 13 designates an "exhaust fan housing" with flanges at either end. The accepted meaning of the term "housing" indicates that the fan should be located within; thus it is believed that Adkins intends for the fan to be between the flanges; alternatively, it would have been obvious to one of ordinary skill in the art at the time of the invention to have made the fan between the flanges, so that the housing (i.e. flanges) would protect the fan from damage.

Adkins also shows the DC fan as called for in claim 2.

Adkins also shows the axial fan as called for in claim 3.

Adkins also shows the array as called for in claim 7.

2. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins, II (U.S. Patent number 5,131,888) in view of Staler, et al. (U.S. Patent number 4,453,119).

Adkins discloses a rechargeable 12 V DC battery and solar charger, but fails to explicitly disclose the lead acid battery and the voltage controller electrically disposed between the battery and solar panel. It is noted that Adkins fails to disclose the nature of the electrodes and electrolyte in the battery; using the generic term "battery"

Staler teaches that a voltage controller electrically disposed between the battery and solar panel is desirable, in order to keep the voltage on the battery constant as output from the solar panel fluctuates. Staler also teaches 12V lead acid batteries are well known (e.g. col. 3, lines 21-23).

Regarding claim 6; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery with the Adkins device, since Adkins fails to disclose any specific battery type.

Regarding claim 8; in light of Staler's teaching that voltage controllers are desirable between solar panels and batteries; it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have had a voltage controller; in order to keep the voltage on the battery constant as output from the solar panel fluctuates.

3. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adkins in view of any one of Finley (United States Patent number 776,310); West (United States Patent number 349,549) or Bates (United States Patent number 98,833).

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claim 5.

4. Claims 9, 12, 13, 14, 15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (United States Patent number 5,857,807) in view of Adkins.

Longo teaches the process of extracting gas from a landfill which uses a well pipe and fan.

Adkins teaches a fan module process which includes the steps of energizing and recharging. The Adkins fan is advantageous in that it is inexpensive and portable. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Longo process to have included installing a fan module in the well, energizing the fan, and recharging the battery as called for in claim 9; since the fan module and solar cell are inexpensive and portable.

Adkins teaches an axial fan as called for in claim 12.

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With regards to claim 13; the rate of gas production is deemed to be a matter of engineering design: it would have been obvious to one of ordinary skill in the art at the time of the invention to have operated the fan such that gas would exhaust at 40scfm.

Adkins teaches maintaining 12 volts DC as called for in claim 14.

Regarding independent claim 15:

Longo teaches a system including fan means in communication with a landfill well. Longo fails to teach the battery and solar power means.

Adkins teaches a fan system including battery and solar power. The Adkins fan is advantageous in that it is inexpensive and portable.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins process to have battery means and solar means as called for in claim 15; since the fan module with battery and solar cell are inexpensive and portable.

Adkins teaches the axial fan as called for in claim 17.

Adkins teaches the pipe and flanges as called for in claim 18.

5. Claims 11, 16, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo, Sr. (U.S. Patent number 5,857,807) and Adkins, II (U.S. Patent number 5,131,888) and further in view of Staler, et al. (U.S. Patent number 4,453,119).



Adkins discloses a rechargeable 12 V DC battery and solar charger, but fails to explicitly disclose the lead acid battery and the voltage-controller electrically disposed between the battery and solar panel. It is noted that Adkins fails to disclose the nature of the electrodes and electrolyte in the battery; using the generic term "battery"

Staler teaches that a voltage controller electrically disposed between the battery and solar panel is desirable, in order to keep the voltage on the battery constant as output from the solar panel fluctuates. Staler also teaches 12V lead acid batteries are well known (e.g. col. 3, lines 21-23).

Regarding claim 11; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery, since Adkins fails to disclose any specific battery type.

Regarding claim 16; in light of Staler's teaching that lead-acid batteries are well known; it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a lead acid battery, since Adkins fails to disclose any specific battery type.

Regarding claim 20; in light of Staler's teaching that voltage controllers are desirable between solar panels and batteries; it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have had a voltage controller; in order to keep the voltage on the battery constant as output from the solar panel fluctuates.

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6. Claims 10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Longo and Adkins and further in view of any one of Finley (United States Patent number 776,310); West (United States Patent number 349,549) or Bates (United States Patent number 98,833)

Adkins fails to show the support rod. Such support rods are well known and old as evidenced by the cited patents; they are used to strengthen the joint and reduce the number of nuts required. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Adkins device to have a support rod as called for in claims 10 and 19.

#### **(10) Response to Argument**

(a) Claims 1-3 and 7:

Appellant has argued that Adkins fails to teach the fan module "configured for engaging a landfill well" and the fan "between the flanges".

With regards to the fan located between the flanges: see column 3, line 9 of Adkins; where reference number 13 is identified as an exhaust fan housing. One of ordinary skill in the art would have understood the term to mean that the fan is within the structure, and thus between the flanges.

With regards to the "configured" limitation:

First, the fan is claimed as "configured for communicating with methane in the landfill", not "configured for engaging a landfill well" as asserted in appellant's brief. The

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other functional limitations concerning a landfill well are: "when the fan module is engaged with a landfill well..." and "for mating with respective flanges of a landfill well...".

While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In *re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). Appellant has failed to point out what structure is missing from the Adkins reference which makes it not "configured for communicating with methane in the landfill" nor has appellant pointed to any structure present in Adkins which precludes such configuration. Furthermore, appellant has not identified any features in the Adkins module (or absent therefrom) which make it unsuitable "for engaging with a landfill well" or which make it unsuitable "for mating with respective flanges of a landfill well".

With regards to appellant's additional arguments concerning the obviousness of the fan positioning: it is figure 3 of Adkins which plainly shows the fan does not extend past the flanges. Adkins clearly shows the fan within the housing, thus suggesting to one of ordinary skill in the art that the fan is---or should be-- between the flanges.

(b) Claims 6 and 8:

Appellant has not made any further substantive arguments concerning claims 6 and 8.

(c) Claim 5:

Appellant has asserted that there is no suggestion or motivation to make the proposed modification to the Adkins device. As stated in the office action mailed 18 October 2005: "Applicant has argued that there is no suggestion to use support rods with the system shown by Adkins. The motivation to use such rods was stated in the rejection: '*to strengthen the joint and reduce the number of nuts required*'. Such motivation is found in the knowledge generally available to those skilled in the art."

Applicant's assertion that since the suggestion is not found explicitly in the prior art, then the rejection falls is not persuasive. See *in re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998) "There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and ***the knowledge of persons of ordinary skill in the art.***" (emphasis added).

(d) Claims 9, 12-15, 17, and 18:

Appellant has argued that the prior art fails to motivate "inexpensive and portable" fans for use in landfills. It is noted that although Longo, sr. teaches a blower in a landfill well, that reference fails to disclose any structure for the blower. One of ordinary skill in the art would have found it obvious to use a fan system as shown by Adkins, based on Adkins teaching that "Another objects of the invention is to provide a solar exhaust fan which is inexpensive and easy to

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fabricate.” (col. 2, line 22). Appellant has asserted that since landfills don't move, one would not be motivated to use a portable fan; however it is apparent that the fan must get to the landfill somehow.

Assuming, arguendo, that one of ordinary skill in the art would not be motivated to find a “portable” fan for landfill use; it defies logic to assert that one would not be motivated to find an “inexpensive” or “easy to fabricate” fan. Such motivation is found in the knowledge generally available to those of ordinary in the art.

Appellant's further arguments concerning the obviousness of installing a solar fan in a hard-wired landfill are not persuasive: Longo does not teach a hard-wired landfill; and appellant's own specification teaches that many landfills lack such hard-wiring.

(e) Claims 11, 16, and 20:

Appellant has not made any further substantive arguments concerning claims 11, 16, and 20.

(f) Claims 10 and 19:

Appellant has not made any further substantive arguments concerning claims 10 and 19.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

JJK

10 November 2005

  
**JOHN KRECK**  
**PRIMARY EXAMINER**

Conferees:

John Kreck



Heather Shackelford



Thomas Will

